

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in compliance with D.N.J. LBR 9004-1(b)

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In re:

BED BATH & BEYOND INC., *et al.*,

Debtors.¹

Case No. 23-13359 (VFP)

Chapter 11

Judge Vincent F. Papalia

(Jointly Administered)

**APPLICATION FOR PAYMENT OF ADMINISTRATIVE EXPENSE CLAIM
OF CMR LIMITED PARTNERSHIP**

CMR Limited Partnership (“CMR”), by and through its undersigned attorneys, hereby submits this request (the “Application”) for payment of its Administrative Expense Claim (as defined hereafter), as follows:

Jurisdiction and Venue

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (B) and (O).
2. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ The last four digits of Debtor Bed Bath & Beyond Inc.’s tax identification number are 0488. A complete list of the Debtors in these chapter 11 cases and each such Debtor’s tax identification number may be obtained on the website of the Debtors’ claims and noticing agent at <https://restructuring.ra.kroll.com/bbby>. The location of Debtor Bed Bath & Beyond Inc.’s principal place of business and the Debtors’ service address in these chapter 11 cases is 650 Liberty Avenue, Union, New Jersey 07083.

Background

3. CMR and debtor Bed Bath & Beyond of Lincoln Park, Inc. (the “Debtor”) are parties to that certain Lease Agreement dated December 13, 1993, as amended, for the premises known as +/- 43,200 RSF on the first and second floors of the Clybourn Place retail center located at 1800 North Clybourn Avenue, Chicago, Illinois 60614 (the “Lease”). The Lease was rejected by the Debtors effective as of July 31, 2023 [Dkt. No. 1906].

4. Debtor Bed Bath & Beyond Inc. is a guarantor of the Lease.

5. On April 23, 2023 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code, commencing the above-captioned chapter 11 cases in the United States Bankruptcy Court for the District of New Jersey.

6. On July 21, 2023, CMR timely filed its administrative expense claims against the Debtors in the amount of \$47,033.80. A true and correct copy of administrative expense claim against Bed Bath & Beyond of Lincoln Park, Inc. is attached hereto as **Exhibit A** and a true and correct copy of administrative expense claim against Bed Bath & Beyond Inc. is attached hereto as **Exhibit B** (collectively, the “Administrative Expense Claim”).

7. On September 14, 2023, the Court entered an order confirming the *Second Amended Joint Chapter 11 Plan of Bed Bath & Beyond Inc. and Its Debtor and its Affiliates*. The Plan became effective on September 29, 2023.

8. Pursuant to the Confirmation Order and Effective Date Notice, the deadline for creditors to file and serve requests for payment of administrative claims is fourteen (14) days after the Effective Date, which is October 13, 2023.

Basis for Relief Requested

9. CMR is entitled to payment of its administrative expense claim pursuant to sections

503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code for certain accrued and unpaid post-petition amounts totaling \$\$47,033.80, as set forth in the Administrative Expense Claim.

10. Section 365(d)(3) of the Bankruptcy Code requires Debtors to “fully and timely” perform their obligations under the Leases. Such obligations include rent, common area maintenance costs, and other charges arising under the applicable lease.

11. The majority of courts have concluded that costs and expenses incurred for post-petition, pre-rejection performance under an unexpired nonresidential real property lease must be allowed as administrative expenses regardless of section 503(b)(1)(A) limitations. *See, e.g., In re Simbaki, Ltd.*, Case No. 13-36878, 2015 WL 1593888, at *2 (Bankr. S.D. Tex. April 3, 2015); *In re CHS Elecs., Inc.*, 265 B.R. 339, 341–42 (Bankr. S.D. Fla. 2001) (agreeing with “a majority of courts” that post-petition rent is entitled to administrative priority without regard to § 503(b)(1)); *In re Liberty Outdoors, Inc.*, 205 B.R. 414, 417 (Bankr. E.D. Mo. 1997) (holding that the lessor is entitled to payment of unpaid expenses pursuant to section 365(d)(3) regardless of whether the expenses benefited or preserved the estate).

12. Section 503(b)(1)(A) of the Bankruptcy Code also affords administrative priority to claims for the actual, necessary costs and expenses of preserving an estate. Based on the foregoing, the amounts set forth in the Administrative Expense Claim constitute actual and necessary costs of the estates that the Debtors failed to pay.

13. Accordingly, CMR is entitled to allowance and immediate payment of its Administrative Expense Claim under the Lease pursuant to sections 365(d)(3), 503(a), 503(b)(1)(A), and 507(a)(2) of the Bankruptcy Code.

Reservation of Rights

14. CMR reserves all rights with respect to its Administrative Expense Claim,

including but not limited to, the right to amend and supplement its claim to include additional post-petition amounts including, rents, taxes, interest, adjustments, costs and attorneys' fees as provided for under the Lease. CMR also reserves its right to file additional administrative expense claims for accrued, but unbilled adjustments, including year-end adjustments, when such amounts are billed.

WHEREFORE, CMR Limited Partnership respectfully requests that the Court enter an order (1) granting its Application and approving and allowing the Administrative Expense Claim in the amount of \$47,033.80 and (2) authorizing and directing the Debtors and/or Plan Administrator to pay CMR the allowed Administrative Expense Claim.

Dated: New York, New York
October 13, 2023

Respectfully submitted,

VEDDER PRICE P.C.

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